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AUG 21 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses	))))	GN Docket No. 96-113

Before: the Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF TELQUEST VENTURES, L.L.C.

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Summary

TelQuest Ventures, L.L.C. ("TelQuest"), a small, entrepreneurial business, has an ambitious and innovative business plan to provide nationwide direct broadcast satellite ("DBS") services in competition with the industry giants that currently dominate the DBS market. Unfortunately, TelQuest has been confronted by almost insurmountable barriers in its efforts to enter this market, including: (i) the structure of the market itself; (ii) the cost of participating in the Federal Communications Commission's recent DBS auction; and (iii) regulatory delay caused by opposition from the incumbent DBS providers and extraneous trade issues raised by the Executive Branch. This small company is on the verge of being forced to abandon its business plan altogether. Should this happen, TelQuest will not be the only loser in this effort; other small businesses who have made substantial financial commitments in anticipation of receiving affordable wholesale DBS services from TelQuest, including many members of the wireless cable industry, will also be harmed.

The market entry barrier which currently looms largest is TelQuest's inability, to-date, to obtain essential licenses from the FCC for the earth stations it will use to provide its service. Without the immediate grant of these licenses, TelQuest will neither be able to obtain the financing it needs nor to meet the wholesale DBS requirements of the other businesses who depend on receiving TelQuest's digital programming. The Commission is in a unique position to remove this market-entry barrier for a small

U.S. business by granting TelQuest's license applications, and TelQuest urges it to do so expeditiously.

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TelQuest Ventures, L.L.C. ("TelQuest"), by its attorneys, hereby submits comments in response to the Notice of Inquiry, released by the Federal Communications Commission (the"Commission" or the "FCC") evaluating how to eliminate market entry barriers for small businesses.[1] TelQuest believes that the information provided below will assist the Commission in identifying and eliminating such market entry barriers.

I. Introduction

TelQuest plans to provide nationwide television programming using a Canadian-licensed direct broadcast satellite ("DBS") to be located at the 91° W.L. orbital slot. This programming, which can be integrated with locally-inserted programming, will be provided by TelQuest in a digitally compressed and encrypted format to U.S. Multichannel Multipoint Distribution Service ("MMDS" or "wireless

[1] In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Notice of Inquiry, 11 FCC Rcd 6280 (1996). (hereinafter "NOI"). In an Order released on July 9, 1996, the Commission extended the deadline for filing comments until August 23, 1996 and the deadline for filing reply comments until September 12, 1996. Order, GN Docket No. 96-113, DA 96-1100, 1996 WL 382416 (released July 9, 1996).

cable") providers and other new market entrants, many of which are small businesses. TelQuest's venture will enable U.S. wireless cable companies, small cable companies and rural telephone companies to compete effectively in the multi-channel video marketplace.

The last DBS orbital slot allocated to the United States was auctioned by the Commission to the highest bidder earlier this year. The cost of merely entering the auction was prohibitive for a small company like TelQuest, let alone the astronomical cost of bidding enough to win the orbital slot. With no DBS satellite capacity available to meet TelQuest's needs on American satellites, TelQuest developed a creative plan to use available Canadian satellite capacity to provide TelQuest's DBS service in the United States. To that end, TelQuest sought the necessary approvals of both the Canadian and American governments.

On March 13, 1996, TelQuest filed with the FCC an application for a fixed-satellite transmit/receive earth station license (File No. 758-DSE-P/L-96) and an application for a blanket license for one million receive-only earth stations (File No. 759-DSE-P/L-96)(collectively the "Applications"). These licenses would permit TelQuest to provide an uplink to the Canadian-licensed satellite and downlinks to those that seek to receive TelQuest's programming. On July 15, 1996, the Commission's International Bureau dismissed TelQuest's Applications, without prejudice, on procedural grounds. Report and Order, DA 96-96-1128 (rel. July 15, 1996) (the "Report and Order"). TelQuest, on August 12, 1996, filed an Emergency Petition for Reconsideration of the dismissal.

II. TelQuest's Status as a Small Business

In the world of DBS communications, TelQuest is unquestionably a "small business". As a pay television company with annual receipts below $11 million, it is also a small business under the Small Business Administration's ("SBA"'s) guidelines. See 13 C.F.R. § 121.201.

Approximately 91.4% of TelQuest is owned by the Jared E. Abbruzzese family and related investment partnerships comprised of individuals. The remaining 8.6% of the company is owned by TelQuest's officers and directors, their families and other individuals. TelQuest's only attributable affiliates under the SBA's guidelines are TelQuest Systems and The Corotoman Company, L.L.C. ("Corotoman"), by virtue of those entities' common management with TelQuest. See 13 C.F.R. § 121.103.[2] Neither TelQuest nor TelQuest Systems generated revenues in its last fiscal year, and the income of Corotoman and the Abbruzzese family did not exceed, in the aggregate, $11 million.

TelQuest's "small business" status is confirmed by an examination of the SBA's factors for determining size standards.

> [The] SBA considers economic characteristics comprising the structure of an industry, including degree of competition, average firm size, start-up costs and entry barriers, and distribution of firms by size. It also considers technological changes, competition from other industries, growth trends, historical activity within an industry, unique factors occurring in the industry which may distinguish small firms from other firms, and the objectives of its programs and the impact on those programs of different size standard levels.

13 C.F.R. § 121.102(a).

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[2] Although Mr. Abbruzzese sits on the Board of CAI Wireless Systems, Inc. ("CAI"), he does not have the power to control CAI, and CAI and TelQuest are therefore not affiliated due to interlocking management.

The structure of the DBS industry is that nine large entities collectively control all of the DBS capacity in the United States.[3] TelQuest has no independent access to a full-continental United States ("full-CONUS") orbital slot for its satellites and has been unable to obtain necessary satellite capacity from the existing providers.[4] The degree of competition for a start-up company like TelQuest is formidable, given that its competitors are all well-entrenched in the DBS industry and that each of them dwarfs TelQuest in terms of total revenues and assets.

The industry's "firm distribution" is simple to summarize: nine substantial firms with exclusive regulatory approvals, and small start-up companies fighting to obtain such regulatory approvals and survive financially. Under these circumstances, it is easy under the SBA's guidelines -- as it should be under any guidelines adopted by the FCC -- to distinguish a small, start-up company like TelQuest from the existing DBS providers and to recognize it as a small business.[5]

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[3] Those entities include EchoStar Satellite Corporation, DBS Industries, Direct Broadcast Satellite Corporation, DIRECTV/Hughes Communications, Dominion Video Satellite, GE Americomm, AT&T, Loral and MCI.

[4] <u>See</u> Declaration of Barbara Sparks, attached to the Consolidated Opposition filed by TelQuest on May 6, 1996 in IB File Nos. 758-DSE-P/L-96 and 759-DSE-P/L-96 ("Consolidated Opposition") (attached hereto as Exhibit 1).

[5] Although the FCC did not establish "small business" guidelines for its DBS auction, TelQuest qualifies as a "small business" under the FCC's rules established in the PCS C block auction. <u>See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order</u>, 9 FCC Rcd 5532 ¶¶ 93-112 (1994) (the "Fifth Report and Order"). Those FCC rules demonstrate that the SBA's "small business" standard of $11 million in receipts (<u>see</u> 13 C.F.R. § 121.201) may not realistically reflect the highly-capitalized nature of the DBS industry. For the PCS C block, which is not nearly as capital-intensive as the DBS

(continued...)

III. Substantial Market Entry Barriers Have Thus Far Prevented TelQuest From Entering the DBS Market

A. The Cost of Participating in the DBS Auction

TelQuest, as a small U.S. business, was foreclosed from effective participation in the auction that resulted in the sale of the last DBS orbital slot assigned to the United States at a price that could only be afforded by a large multi-national corporation.[6] This was a huge barrier to TelQuest's entry into the DBS market.

TelQuest could not compete with the News Corp.s, MCIs, and Telecommunication Inc.s of this world for the last U.S. orbital slot. The FCC required a large upfront payment of $10 million, which created an economic barrier that precluded small businesses like TelQuest from even participating in the auction. That barrier to entry was raised even higher when the Commission established a minimum opening bid of $125 million and MCI made a commitment prior to the auction to make an opening bid of $175 million. Furthermore, because of the enormous size of the winning bid for the space station construction permit that will use that slot, not one small business or start-up company could even participate in the DBS auction. Without any small business bidding preferences adopted for the DBS auction, a small start-up company like TelQuest would have had no chance of outbidding the

[5](...continued)
industry, the FCC defined a "small business" as having less than $40 million in annual gross revenues.

[6] A team with enormous financial resources, made up of News Corporation Limited ("News Corp."), one of the largest broadcasting companies in the world, and MCI Telecommunications Corporation ("MCI"), prevailed in the auction, bidding $682.5 million for the final orbital slot.

combined forces of News Corp. and MCI. In fact, no small business provisions were included in the FCC's DBS auction rules and, contrary to Congress's design, only the "deep pockets" could bid for this spectrum. Because of these barriers, TelQuest was forced to be extremely innovative if it wanted to provide digital compression to the U.S. wireless cable industry and compete in the U.S. market for wholesale DBS. Through its Applications, it has found a way to do so.

B. The Baseless Opposition by DBS Incumbents Has Impeded TelQuest's Entry Into the Market

Faced with a lack of available satellite capacity in this country, TelQuest entered into an agreement with Telesat Canada to own 22 transponders for the provision of service on satellites to be operated in a Canadian orbital position at 91° W.L. Such an agreement is not unusual. Historically, the United States and Canadian satellite operators frequently have looked to one another in times of shortages of domestic satellite capacity. This understanding has been memorialized in an Exchange of Letters between U.S. and Canadian officials, and the Commission has relied on the Exchange of Letters on numerous occasions to authorize use of Canadian satellites for U.S. domestic service. These arrangements have proven extremely beneficial to the two countries, both in facilitating the introduction of telecommunications services on a cross border basis and in responding to capacity shortages.

Nevertheless, several incumbent DBS providers filed petitions to deny TelQuest's Applications with the common intent of obstructing TelQuest's regulatory approval process to protect themselves from the rigors of additional competition.[7] For example, in their opposition to TelQuest's Applications, News Corp. and MCI contended, inter alia, that the approval of TelQuest's Applications would contravene the Commission's competitive bidding policies. News Corp. and MCI claim that they were not aware that non-U.S. satellites might be used for domestic services. This is not correct.

As TelQuest responded in its Consolidated Opposition, MCI participated in the Commission proceeding that adopted the DBS auction rules in which the Commission notified potential bidders that it is considering the delivery of DBS to the U.S. from foreign-licensed satellites. The Commission specifically warned prospective bidders to factor in the effect of permitting non-U.S. satellites to provide domestic service when calculating bids in the DBS auction.[8] It would be short-sighted for companies with the experience and resources of MCI and News Corp. to ignore such warnings and not to anticipate that some small U.S. business might seek to provide domestic service via a foreign orbital slot. In fact, TelQuest met with MCI prior to the auction and offered MCI the opportunity to participate in its plans to use the 91° W.L.

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[7] TelQuest previously refuted the arguments made by these incumbents in its Consolidated Opposition submitted in IB File Nos. 758-DSE-P/L-96 and 759-DSE-P/L-96.

[8] See Revision of Rules and Policies for the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking, 11 FCC Rcd 1297 ¶10 (1995).

orbital slot.[9] Thus, MCI's objection to TelQuest's Applications is blatantly anti-competitive.

EchoStar Satellite Corporation and Echostar DBS Corporation (collectively "EchoStar") likewise have opposed TelQuest's Applications on the grounds, inter alia, that the Commission must defer consideration of the Applications until the completion of the DISCO II rulemaking proceeding.[10] EchoStar also claimed that TelQuest's Applications implicate issues of international trade between the U.S. and Canada that should be resolved before a decision is made with regard to TelQuest's Applications. EchoStar's opposition is disingenuous in light of EchoStar's own attempts to maneuver to take control of the 91° W.L. orbital slot.[11]

EchoStar already has one full-CONUS slot and controls 22 of 96 full-CONUS frequencies and 46 out of 160 partial-CONUS frequencies. Through a variety of transactions, EchoStar is attempting to acquire or gain control over 22 additional partial-CONUS frequencies. If it is successful, EchoStar will gain control over almost 34% of the full-CONUS capacity in North America and 43% of all U.S. partial-CONUS capacity. By aggregating as much DBS spectrum as possible EchoStar intends effectively to preclude entry of new DBS competitors. EchoStar's

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9 Declaration of Jared Abbruzzese ("Abbruzzese Decl."), attached to TelQuest's Consolidated Opposition as Exhibit 3 (attached hereto as Exhibit 2).

10 See Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111, CC Docket No. 93-23, RM-7931, File No. ISP-92-007 (released May 14, 1996) ("DISCO II").

11 Abbruzzese Decl. at 3.

opposition to TelQuest's Applications is further evidence of the lengths to which it will go to prevent competition.

The baseless opposition by incumbent providers amounts to anti-competitive conduct that causes regulatory delay threatening TelQuest's very existence. Such opposition constitutes yet another barrier to TelQuest's entry into the DBS market.

C. Trade Politics Is a Barrier to Entry for Small U.S. Businesses

After the incumbents had voiced their opposition, another barrier arose from an unexpected source. On July 1, 1996, well after the pleading cycle in this proceeding had ended, certain Executive Branch agencies filed a joint letter with the Commission injecting unrelated trade issues into the application process.[12] Moreover, the Executive Branch requested the Commission to defer action on TelQuest's Applications under the incorrect assumption that the Canadian satellite from which TelQuest proposed to provide service had not received appropriate authorization from

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[12] In addition to the procedural grounds on which the International Bureau dismissed TelQuest's applications, the Executive Branch raised four issues in its letter. The fourth issue implicates competitive issues in the U.S. market and clearly pertains only to the unrelated application of Western Tele-Communications, Inc. The remaining three trade issues are:

(1) The Applications could impact U.S. obligations under international agreements.

(2) Canada's restrictions on movies and magazines serve to discriminate against U.S. and other foreign programmers and service providers by mandating a minimum amount of Canadian content.

(3) Canada maintains restrictions over the use of non-Canadian satellites for the distribution of telephony and broadcasting services to Canada.

the Canadian government and, thus, that the Applications were premature.

Noting that this matter was scheduled for decision on July 15, 1996, TelQuest requested a short deferral of two weeks in order to respond to the issues raised by the Executive Branch and to develop a complete record before the Commission. This request was denied by the International Bureau's Report and Order of July 15, 1996, depriving TelQuest of the opportunity to correct the record on the satellite authorization issue. Instead, the Bureau adopted the Executive Branch's erroneous assumption that the Canadian satellite had not received appropriate authorization and dismissed TelQuest's Applications.[13] On August 12, 1996, TelQuest filed an

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[13] The reaction by members of the small business community to the dismissal of these applications is telling. A group of delegates at the White House Conference for Small Business stated in a recent letter to the Commission,

> It is clear to us that, in this first test case of the Telecommunications Act of 1996, a sophisticated corporate-financed lobbying blitz has effectively derailed a prospective entrant into the subscription television market.
>
> . . . Few small businesses can survive the time and expense created by inordinate delays due to unnecessary and heavy-handed political influence.

Letter to William F. Caton from Sandra Abalos and others, dated July 24, 1996, attached hereto as Exhibit 3. Leaders of the National Association of Women Business Owners ("NAWBO") echoed these sentiments in writing that "NAWBO . . . are presently concerned that the goal of a level playing field for small business is not being met. . . ." Letters to William F. Caton from Kathleen Gillespie and Barbara Kasoff, dated July 24, 1996, attached hereto as Exhibit 4.

Many small business owners earlier filed letters with the Commission in support of TelQuest's Applications. See letters in support of TelQuest's Applications, attached to TelQuest's Consolidated Opposition as Exhibit 6 (attached hereto as Exhibit 5).

emergency petition for reconsideration demonstrating that the Canadian Government has granted the equivalent of an FCC construction permit for TelQuest's proposed use of the Canadian DBS orbital slot.

IV. **TelQuest's Inability to Provide Wholesale DBS Services Creates a Market Entry Barrier For Small Businesses in the Wireless Cable Industry**

The delivery of video programming in the U.S. is currently dominated by the hard-wired cable industry. TelQuest's wholesale DBS service will be critical to the ability of U.S. wireless cable operators, many of which are small businesses, to offer digital service and compete with hard-wired cable providers. The unavailability of TelQuest's service creates a huge market entry barrier for these U.S. wireless cable companies. Permitting TelQuest to proceed with its plans will further the Commission's policy goals of developing meaningful competition to hard-wired cable and of providing more opportunities for small U.S. businesses in the communications industry.

The Commission's competition study for 1995 indicates that hard-wired cable provides over 91% of the video programming in the United States.[14] One reason for this market domination is that one potential competitor, wireless cable, is at a severe disadvantage. Wireless cable operators are unable to serve all of the households in a market because wireless cable technology is limited to providing service to those households in the line-of-sight of the local transmitter. In addition, wireless cable can

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[14] Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Second Annual Report, 11 FCC Rcd 2060, 2063, 2150-2151 (1995).

only access 12 full-time and 20 part-time analog channels absent digital compression, while DBS and hard-wired cable can offer many more programming channels.

Indeed, the Commission repeatedly has recognized wireless cable's difficulties in competing with hard-wired cable companies and DBS providers, and in particular, its difficulty in obtaining sufficient channel capacity.[15] Moreover, in recognizing the public interest in a competitive video programming services market, the Commission recently authorized wireless cable operators to use digital compression, which is already in use by DBS providers and will be available to hard-wired cable companies within a year.[16]

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[15] See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Notice of Proposed Rulemaking, 9 FCC Rcd 7665, 7666-7667 (1994) (in which the Commission stated:

> In providing communications services, the public interest is better served by competition. A competitive industry framework promotes lower prices for services, provides incentives for operators to improve those services and stimulates economic growth. An essential component of competition is choice. As we recognized in our recent report to Congress, consumers in the market for video programming do not have enough choices. Although competing technologies have made major strides ... the cable television market remains largely noncompetitive. . . [T]he difficulty of accumulating sufficient channel capacity remains a major obstacle to many wireless cable operators.

[16] In the Matter of a Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations, DA 95-194 (rel. July 10, 1996). In approving the conversion to digital technology, the Commission wrote:

> We expect that the introduction of digital technology will enhance the service of wireless cable operators by allowing

(continued...)

The U.S. wireless cable industry is relying on TelQuest to bring it, through digital compression, the increased number of channels that is necessary to compete successfully with the cable TV incumbents. As the press has recently indicated, the industry does not have the financing to digitize individually.[17]

The wireless cable industry is primarily made up of small, entrepreneurial businesses which "do not have the resources or deep pockets that the large incumbent cable operators have."[18] These small business have collectively spent $216 million in the FCC auction of MMDS licenses but will have great difficulty in taking advantage of this spectrum without an affordable source of digital programming.[19] The capital investment required for each wireless cable operator to install its own digital compression

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[16](...continued)

> opportunities for increased channel capacity and programming choices available to consumers, sharper television pictures, a broader coverage area, and the provision of video, voice, and data services that cannot be offered currently. . . .
>
> Thus, the Commission's interests in fostering competition in the video programming services market and promoting the use of ITFS spectrum for educational programming will clearly be advanced by authorizing wireless cable operators to employ digital technologies.

Id. at ¶ 5.

[17] See Broadcasting & Cable, July 29, 1996; Broadcasting & Cable, July 15, 1996.

[18] Letter to William F. Caton from Richard Alston, President, Wireless Cable Association International, Inc. ("WCA"), dated July 29, 1996 ("July WCA Letter"), attached hereto as Exhibit 6.

[19] Letter to William F. Caton from Robert L. Schmidt, William R. Jenkins and Richard J. Amos, Jr., dated July 24, 1996 ("Schmidt Letter"), attached hereto as Exhibit 7; July WCA Letter, attached hereto as Exhibit 6.

equipment at each system headend would be enormous: an estimated $85,000 per channel, per headend, or $2 to $10 million for each operator.[20]

TelQuest will provide affordable national programming in a digitally compressed and encrypted format to wireless cable providers, as well as to small cable operators and independent local exchange carriers.[21] The digital satellite feed will give these small businesses the compression capability they need without the prohibitive expense of compression at each headend. TelQuest's service will permit these small businesses to integrate more than 100 national video channels with local programming within their market and to extend the reach of their market with direct-to-home ("DTH") DBS service to households where physical line of sight impediments exist.

As Robert Schmidt, then President of the Wireless Cable Association International, Inc. ("WCA"), stated in WCA's April, 1996 letter supporting TelQuest's Applications, wireless cable "has the potential to become a serious competitor to DTH DBS service because of its ability to provide local programming as part of its service."[22] The ability to provide local programming is crucial for any technology that expects to compete with hard-

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[20] Schmidt Letter, attached hereto as Exhibit 7; July WCA Letter, attached hereto as Exhibit 6.

[21] TelQuest's service will be provided at a low price because it will be subsidized with interactive national advertising not available in the market today. Abbruzzese Decl., attached to TelQuest's Consolidated Opposition as Exhibit 3 (attached hereto as Exhibit 2).

[22] Letter to William F. Caton from Robert L. Schmidt, then President, WCA, dated April 25, 1996 ("April WCA Letter"), attached to TelQuest's Consolidated Opposition as Exhibit 1 (attached hereto as Exhibit 8).

wired cable television. As indicated in a recent survey conducted by Peter Hart and commissioned by TelQuest, U.S. consumers are eager to have access to a DBS product that combines national and local programming at a competitive price.[23] In addition, by providing a service that aggregates, digitizes, compresses, encrypts and transmits the video signal, TelQuest will provide the most cost efficient method for wireless cable to compete with other Multi-channel Video Programming Distributors.

Time is of the essence. As recently stated by a group of wireless cable operators in a letter to the Commission, "Having made [the] investment [in spectrum], we are facing hurdles common to many small businesses: insufficient capital reserves and little grace period before we must recoup our investments. . . . We simply cannot afford to wait for this new service any longer." Schmidt Letter, attached hereto as Exhibit 7.

Without the approval of TelQuest's Applications, the FCC's decision to digitize is meaningless; wireless cable providers will have no realistic opportunity to compete with the hard-wired cable industry. Many wireless cable operators, most of which are already subject to severe financial pressures, believe that with the dismissal of TelQuest's Applications there will be no alternative but to sell out to large corporations, such as the Regional Bell Operating Companies.[24]

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23 See Peter Hart survey, attached hereto as Exhibit 9.

24 Should the Regional Bell Operating Companies or others gain control of important U.S. wireless cable assets, this could lead to such abuses as warehousing the spectrum, using it for a purpose other than competing in the video programming services market, or using it on only an interim basis to deliver video programming to only the largest U.S. cities until the

(continued...)

V. **The Commission Can Eliminate The Most Significant Market Entry Barriers Currently Facing Both TelQuest and the Wireless Cable Industry by Granting TelQuest's License Applications**

Time is running out on TelQuest and the other small businesses that hope to use TelQuest's wholesale DBS service. TelQuest has only a small window of opportunity in which to act; its time constraints are real and unbending. First, TelQuest must provide service soon to meet the digital compression requirements of those MMDS operators who are relying on TelQuest's services in order to effectively compete against the entrenched hard-wire cable operators. Second, TelQuest must access the capital markets prior to fall 1996 to raise funds for this project. TelQuest will not be able to obtain this essential financing without the Commission's approval of its Applications. Without such financing, TelQuest will be forced to cease operations by the end of 1996 or seek an alliance with a large corporation.

If upheld, the Report and Order dismissing TelQuest's Applications will encourage the concentration of video delivery in the hands of a few, sounding the death knell for TelQuest's proposed service and the benefits it will bring both to wireless cable providers and to the cable industry as a whole. TelQuest and others, including the aforementioned wireless cable operators, small business organizations, and small businesses, have implored the Commission to avoid this result by acting expeditiously to grant TelQuest's Applications. Under the existing circumstances,

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[24](...continued)
construction of hard-wired cable systems have been completed. As the press has recently pointed out, the Regional Bell Operating Companies need wireless cable "to buy time to replace their copper twisted-pair network". Broadcasting & Cable, July 15, 1996. See also American Banker, April 15, 1996.

any further delay in the grant of these Applications will have the same effect as denying them altogether.

VI. Conclusion

TelQuest is a prime example of an entrepreneurial small U.S. business that has been prevented by substantial market entry barriers from providing advanced telecommunications services to the American public. These obstacles have also harmed many small U.S. wireless cable operators who desperately await an affordable source of digital programming from TelQuest. Having helped the Commission to identify these market entry barriers, TelQuest urges the Commission to take all actions within its control to eliminate them.

Respectfully submitted,

TELQUEST VENTURES, L.L.C.

By: ______________________

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Its Attorney

August 21, 1996

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EXHIBIT 1

Declaration of Barbara Sparks

I, Barbara Sparks, hereby declare, under the penalty of perjury, the following:

1. I reside at 3772 East Costilla Avenue, Littleton, Colorado.

2. I am Executive Vice President of TelQuest Ventures, L.L.C. ("TelQuest").

3. I have worked in the satellite telecommunications business for approximately 7 years.

4. TelQuest's business plan calls for the distribution of digitally-compressed and encrypted video programming through the use of direct broadcast satellite ("DBS") technology. This programming will be sold to competitive, terrestrial multichannel video programming distributors ("MVPDs") such as wireless cable systems and small franchised cable systems, as well as being distributed on a direct-to-home ("DTH") basis. To provide this service, TelQuest will require at least 16 and ideally 22 satellite transponders.

5. Between December 1994 and November 1995, I contacted the following entities on behalf of TelQuest to determine whether they had suitable satellite capacity that TelQuest could lease or purchase on a domestic DBS satellite to further its business plans. As demonstrated below, I received negative responses from all of them.

a. EchoStar Satellite Corp. ("Echostar"): I spoke with Mr. Bill Vanderpool, Vice President, New Business Development, on three occasions; once during the week of March 12, 1995, again during the week of April 16, 1995, and once again during the week of May 1, 1995. During the course of these three conversations, I made it clear to Mr. Vanderpool that TelQuest would require lease or purchase agreements for at least 16 transponders. Mr. Vanderpool consistently responded that TelQuest should consider EchoStar's own digital distribution system, which is still in development. Despite my strong expressions of interest, Mr. Vanderpool never indicated that EchoStar had transponders available for TelQuest's needs.

b. DBS Industries ("DBSI"): I had at least four telephone conversations with Mr. Fred Thompson, then of DBSI, on April 10, May 2, and May 3, 1995, regarding our satellite needs. Mr. Thompson indicated that Mr. Charlie Ergen, CEO of EchoStar, also held a substantial interest in DBSI, and that Mr. Thompson would speak to Mr. Ergen regarding TelQuest's needs. It is my understanding that EchoStar was a major shareholder in DBSI at the time of these conversations, and that DBSI has since been acquired by EchoStar.

c. Direct Broadcast Satellite Corp. (DBSC): I met with Mr. Harley Radin of DBSC in Washington on August 15, 1995, and later in New York with Mr. Radin of DBSC and Mr. John Shackelford, a consultant for DBSC. I made clear to Mr. Harley that TelQuest would need access to transponders which it leased or owned outright. On November 21, 1995, Messrs. Radin and Shackelford outlined a proposal to me that included control over programming by DBSC. Because this type of proposal did not fit into TelQuest's business plan, negotiations were discontinued. It is my understanding that EchoStar was a major shareholder in DBSC at the time of these conversations, and that DBSC was subsequently purchased by EchoStar.

d. DIRECTV/Hughes Communications: During the last quarter of 1995, a consultant retained by TelQuest, who reported directly to me, made contact on behalf of TelQuest with Don Gabriel of Hughes. Hughes indicated that some capacity might exist on FSS satellites slated for launch in 1997. In later conversations, however, Hughes concluded that it was unwilling to take actions that would result in competition to DIRECTV, which I understand to be an affiliate or subsidiary of Hughes. On this basis, negotiations were discontinued.

e. Dominion Video Satellite ("Dominion"): On April 4, 1995, I met with Mr. Bob Johnson of Dominion in Naples, Florida. Mr. Johnson indicated that Dominion had no suitable transponders available for TelQuest's proposed venture.

f. GE Americomm ("GE"): TelQuest's consultant spoke with Mr. Jack Hyle of GE in the second half of 1995. I have also spoken often over the last year with Mr. Andreas Georgiou and Ms. Laura Thatcher. Ultimately, it became clear GE could not meet TelQuest's needs.

g. AT&T: I had many conversations with Mr. Ted Corus, Ms. Joan Hedinger, and Mr. Karl Savatal of AT&T Skynet in late 1995, and learned that no transponder capacity was presently available.

h. Loral: During the second half of 1995, I spoke at various times with Messrs. Mike DeBlassio, Mickey Targott, Dan Collins, Tom Johnston, and Rex Hollis of Loral regarding many matters, including the availability of their potential DBS channels at 61.5° W.L. I was told that the DBS capacity had already been leased to another party.

6. To my knowledge, these entities collectively control all domestic United States DBS capacity, with the exception of those orbital slots recently awarded by the FCC to MCI.

Declaration of Barbara Sparks
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I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge thereof, except as otherwise expressly stated.

Executed this 6th day of May, 1996.

By: B Sparks
Barbara Sparks